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PROJECT NO. 50664

**EMERGENCY RULEMAKING TO  
PROVIDE CUSTOMER RULES  
FOR TEMPORARY SUPPORT  
TO VICTIMS OF COVID-19**

§ **PUBLIC UTILITY COMMISSION**  
§  
§ **OF TEXAS**  
§



**PETITION FOR EMERGENCY RULEMAKING  
TO PROVIDE CUSTOMER PROTECTION RULES  
FOR TEMPORARY SUPPORT TO VICTIMS OF COVID-19**

**Texas Legal Services Center  
Disability Rights Texas  
Legal Aid of Northwest Texas  
Lone Star Legal Aid  
People's Community Clinic  
Texas Health Action  
Texas Rio Grande Legal Aid**

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

Texas Legal Services Center<sup>1</sup>, Disability Rights Texas, Legal Aid of Northwest Texas, Lone Star Legal Aid, People's Community Clinic, Texas Health Action, and Texas Rio Grande Legal Aid hereby file this Petition for Emergency Rulemaking at the Public Utility Commission of Texas (PUC or Commission). This Petition seeks an emergency rule to provide customer protection for temporary support of victims of the coronavirus (COVID-19) during and for 30 days after the termination of the state of emergency.

The emergency rule requested would apply to all Texans regardless of income. COVID-19 is impacting and will continue to significantly impact and change the economic status of virtually all Texans. In addition to those direct victims who sicken or die, and those who have relatives or

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<sup>1</sup> TLSC has previously petitioned for emergency rules. We filed emergency petitions to prohibit the disconnection of electric service for nonpayment during a declared heat emergency that posed an imminent threat to the health, safety, and welfare of residential customers. The Commission adopted such a rule in August of 1998 and again in August of 2000. This led to the adoption of the current prohibition on disconnection during extreme weather, PUC Subst. R. 25.4830. TLSC also filed an emergency rule petition to continue security deposit waivers for victims of Hurricane Katrina in 2006. Most recently, TLSC filed an emergency rule petition to provide protection to victims of Hurricane Harvey.

loved ones infected, COVID-19 will have a significant negative effect on most or all Texans. COVID-19 will certainly devastate some of the more vulnerable Texans discussed below, and the loss of electricity, water, and basic utilities will not only exacerbate the crisis for individuals, but increase the danger to the general public.

If granted, this Petition would, first and foremost, institute an emergency rule applying a moratorium on utility shutoffs to residential utility services statewide, thereby avoiding catastrophic consequences to the millions of customers affected by COVID-19 across the state. The emergency rule would further provide essential temporary relief for Texans who already have had their utilities shut off, as well as temporary prohibitions against late fees.

## **I. Background**

Coronavirus (formally Severe Acute Respiratory Syndrome coronavirus 2 or SARS-CoV-2) is the virus that causes the disease known as COVID-19.<sup>2</sup> On March 13, 2020, national<sup>3</sup> and state<sup>4</sup> emergencies were declared following the World Health Organization's March 11, 2020, classification of COVID-19 as pandemic.<sup>5</sup> As of March 18, 2020, there were 170,000 confirmed cases, including 7,000 deaths in approximately 150 countries.<sup>6</sup> As of March 19, 2020, over 10,400

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<sup>2</sup> WHO, *Naming the Coronavirus Disease (COVID-19) and the Virus that Causes It* (Feb. 11, 2020), [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it).

<sup>3</sup> *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (Mar. 13, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

<sup>4</sup> *Governor Abbott Declares State of Disaster in Texas due to COVID-19* (Mar. 13, 2020), <https://gov.texas.gov/news/post/governor-abbott-declares-state-of-disaster-in-texas-due-to-covid-19>.

<sup>5</sup> WHO, CORONAVIRUS DISEASE 2019 (COVID-19) SITUATION REPORT—51 (Mar. 11, 2020), [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200311-sitrep-51-covid-19.pdf?sfvrsn=1ba62e57\\_4](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200311-sitrep-51-covid-19.pdf?sfvrsn=1ba62e57_4).

<sup>6</sup> Ctrs. for Disease Control, *Coronavirus Disease 2019 (COVID-19): Cases in U.S.* (Mar. 19, 2020), [https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-in-us.html](https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-in-us.html).

cases had been reported in the U.S., including 150 deaths amongst the fifty states, D.C., and three territories.<sup>7</sup> There are an estimated 500 or more new cases nationally every day beginning March 14.<sup>8</sup> And on March 19, 2020, Texas declared a public health disaster for the first time since 1901 in light of our 143 cases, including over half of all Texas counties and 3 associated Texan deaths.<sup>9</sup>

Youth under the age of twenty are most likely to be asymptomatic carriers, unknowingly transmitting the virus to those high-risk for severe consequences up to and including death.<sup>10</sup> Although those aged 20-54 are most likely to be hospitalized as a result of COVID-19, fatality in the U.S. has been highest in persons aged 85 and older, ranging from 10% to 27%, followed by 3% to 11% among persons aged 65–84 years.<sup>11</sup>

In the days and weeks leading up to the declarations and since, municipalities and utility companies have responded variously. For example, Austin Energy demonstrated its “commit[ment] to the health and safety of the public” by suspending all utility disconnects for non-payment<sup>12</sup> and restoring service to those previously disrupted.<sup>13</sup> Other large cities, such as Dallas<sup>14</sup> and San Antonio<sup>15</sup>, have done varying versions of the same. But many Texans have been

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<sup>7</sup> Ctrs. for Disease Control, *Severe Outcomes Among Patients with Coronavirus Disease 2019 (COVID-19) — United States, February 12–March 16, 2020*, 69 MORBIDITY AND MORTALITY WEEKLY REPORT 1, 1–2 (Mar. 18, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6912e2-H.pdf>.

<sup>8</sup> *Id.* at 1.

<sup>9</sup> Tex. Dep’t State Health Serv., *COVID-19 (New Coronavirus)* (Mar. 19, 2020), <https://www.dshs.state.tx.us/news/updates.shtm#coronavirus>.

<sup>10</sup> *Id.* at 1–2.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> Press Release, Austin Energy, *City of Austin Utilities Suspends Disconnects amid COVID-19* (Mar. 13, 2020), <https://austinenenergy.com/ae/about/news/news-releases/2020/city-of-austin-suspends-utility-disconnects-amid-covid-19>.

<sup>13</sup> Press Release, Austin Energy, *Utility Customers without Services Urged to Contact City of Austin to Make Reconnection Arrangements* (Mar. 16, 2020), <https://austinenenergy.com/ae/about/news/news-releases/2020/city-of-austin-reconnecting-utilities>.

<sup>14</sup> Press Release, DWU *Suspends Water Disconnects until Further Notice, Affirms Water Safety* (Mar. 18, 2020), <http://www.dallascitynews.net/dwu-suspends-water-disconnects-notice>.

<sup>15</sup> Press Release, *Statement from CPS Energy – Update Regarding COVID-19* (Mar. 11, 2020), <https://newsroom.cpsenergy.com/march-11-2020-statement-from-cps-energy-update-regarding-covid-19/>.

left out in the cold, as cities shutter their water and electricity utility offices, but not their collection efforts.<sup>16</sup>

Similarly, some utility companies have voluntarily suspended disconnections or taken other steps to mitigate the harm of unstable utility access in this time of crisis. For example, Reliant Energy has paused payment-related disconnects for residential and small commercial customers,<sup>17</sup> and TXU Energy is waiving late fees and extending payment due dates, inter alia.<sup>18</sup> But the terms and conditions for these deferrals are likely unknown to the Commission and almost certainly unknown to the public at large.

Accordingly, in order to guarantee uniform protections to the public regardless of which retail provider they chose or in which city they reside, to create consistency and fairness, and to further the public health, PUC should follow the lead of more than a dozen other states by (1) suspending rules permitting disconnections of service for electric, telephone, and water; (2) prohibiting late fees; and (3) restoring services for those previously disconnected.

## **II. Need for the Proposed Rule**

### *a. Why Utilities Matter in Light of the Coronavirus Pandemic*

The National Association of Regulatory Utility Commissioners notes “how closely utility service—and its effective regulation—is tied to public health and the overall public welfare” in its

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<sup>16</sup> See, e.g., Press Release, *City of Tyler Announces Modified Operations for Facilities* (Mar. 13, 2020), <https://www.cityoftyler.org/government/departments/communications/coronavirus-updates>.

<sup>17</sup> Press Release, *Houston Business Wire, Reliant Helping Customers During Coronavirus Pandemic*, AP NEWS (Mar. 16, 2020), <https://apnews.com/Business%20Wire/cab870b37a894ee280b5f6838263267b>.

<sup>18</sup> TXU Energy, *TXU Energy Provides Customer Assistance During Coronavirus Pandemic*, PR NEWswire (Mar. 15, 2020), <https://www.prnewswire.com/news-releases/txu-energy-provides-customer-assistance-during-coronavirus-pandemic-301024471.html>.

support of state moratoria on service disconnections in light of the current crisis.<sup>19</sup> In particular, handwashing with soap and water for at least twenty seconds is the single most important way to reduce exposure to and prevent the spread of coronavirus as well as other diseases that may increase susceptibility to coronavirus.<sup>20</sup> Running water is a necessary component of this formula. Similarly, the other two best public health pandemic practices include “social distancing” and self-isolation<sup>21</sup>, both of which are facilitated by active utility services. Moreover, access to running water, electricity and/or gas, telephone, and other public services has disparate and specific health impact on subpopulations and communities, described in limited summary in Appendix A.

As a result, federal lawmakers have urged utility companies to suspend water disconnections, calling inaction “reckless in the extreme” and “a matter of protecting public health”.<sup>22</sup> Twelve others called on Congress to work with state and local governments to institute a national plan for shut-offs and service restoration<sup>23</sup>, as have other public organizations.<sup>24</sup> Regardless of the ultimate federal response, a Texas solution is possible and appropriate.

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<sup>19</sup> Press Release, *Nat’l Assoc. Reg. Utility Comm’rs, NARUC Statement on COVID19* (Mar. 18, 2020), <https://pubs.naruc.org/pub/4A243662-155D-0A36-318A-890B504000DF>.

<sup>20</sup> WHO, *Coronavirus disease (COVID-19) Advice for the Public* (Mar. 18, 2020), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public>; Ctrs. Disease Control, *Coronavirus Disease 2019 (COVID-19): How to Protect Yourself* (Mar. 18, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>.

<sup>21</sup> *Id.*

<sup>22</sup> Press Release, *Pallone & DeFazio Ask Water Utility Companies to Stop Shutting Off Water Service in Midst of Coronavirus Outbreak* (Mar. 10, 2020), <https://transportation.house.gov/news/press-releases/pallone-and-defazio-ask-water-utility-companies-to-stop-shutting-off-water-service-in-midst-of-coronavirus-outbreak>.

<sup>23</sup> *High Water Bill Leadership Letter* (Mar. 11, 2020), <https://dankildee.house.gov/sites/dankildee.house.gov/files/High%20Water%20Bill%20Leadership%20Letter%20%28002%29.pdf>.

<sup>24</sup> E.g., Nat’l Consumer L. Ctr, *Covid-19 Pandemic Requires Federal, State and Municipal Action to Stop Involuntary Utility, Water, and Telecommunications Shut-offs*, (Mar. 2020), [https://www.nclc.org/images/pdf/special\\_projects/IB\\_pb\\_Covid\\_19\\_utility.pdf](https://www.nclc.org/images/pdf/special_projects/IB_pb_Covid_19_utility.pdf).

### **III. Proposed Text of Rule**

Purpose: To assure that all Texans have sufficient opportunity to obtain and reasonably maintain residential utility services during the coronavirus disaster.

1. No electric, water, or telephone provider, or any company providing a combination of such services (a “Residential Service Company”), shall terminate the service of a customer if the service is used, in whole or in part, in a dwelling unit or residence.
2. A Residential Service Company shall not bill or collect, on an account that serves a dwelling unit or residence, any down payment, fee, or charge imposed for a late or otherwise untimely payment that becomes due from the date of this Rule.
3. A Residential Service Company shall make reasonable attempts to reconnect service to any occupied dwelling unit or residence that has been terminated or disconnected without requiring reconnection fee.
4. This Rule remains effective until 30 days after the latter of the termination of the state of emergency and the proclamation of the catastrophic health emergency.
5. The effect of any rule or regulation by this Commission that is inconsistent with this Rule is hereby suspended.

### **IV. Statutory Authority**

The Commission has the authority to adopt an emergency rule to protect victims of COVID-19 under the following statutes:

- Section 14.002 of the Public Utilities Regulatory Act (PURA), which provides the Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction;

- PURA § 32.001, which grants the commission exclusive original jurisdiction over the rates, operations, and services of an electric utility in areas outside a municipality and areas inside a municipality that has surrendered its jurisdiction to the commission;
- PURA § 39.101, which grants the commission authority to establish various, specific protections for retail customers, and provides the PUC with jurisdiction over retail electric providers and electric utilities in enforcing the protections;
- PURA § 39.102, which provides for retail customer choice;
- PURA § 64.001, which establishes customer protection standards and confers on the commission authority to adopt and enforce its customer protection rules;
- PURA Chapter 17, Subchapters A, C, and D, which deal, respectively, with general provisions relating to customer protection policy to be followed by retail electric providers and electric utilities, the retail customer's right to choice, and protection of the retail customer against unauthorized charges; and
- Section 2001.034 of the Administrative Procedure Act, which provides that a state agency may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and a hearing that it finds practicable, if the agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice.

## **V. Summary and Conclusion**

We Texans have only begun to comprehend the devastation that a coronavirus unleashed will wreak upon us. Two things that we do understand clearly is that people will need to spend far more time inside their homes, and that good hygiene is of the utmost importance. Maintaining utility services to our homes is not only critical to the health, safety, and welfare of Texans as

individuals, but to the larger goals of preventing and limiting the spread of COVID-19. The Commission has an opportunity to provide a level of relief to every Texan and ensure that all of us in Texas are a little bit safer by issuing this Emergency Rule. We cannot more urgently request that the Commission grant our Petition to provide temporary protection against the coronavirus.

Dated: March 20, 2020

Respectfully Submitted,  
by Texas Legal Services Center  
Legal Aid of Northwest Texas  
Lone Star Legal Aid  
People's Community Clinic  
Texas Health Action  
Texas Rio Grande Legal Aid  
Disability Rights Texas

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**APPENDIX A:**  
**Select Evidence Base for Impact of Utilities**  
**on the Health and Well-Being of Target Populations**

Access to running water, electricity and/or gas, telephone, and other public services has disparate and specific health impact on subpopulations, described in limited summary below. Should additional data or other information related to these or other populations be helpful, we are available to provide it.

*Children and Adolescents*

Generally, babies and toddlers living in energy insecure households are more likely to be in poor health, have a history of hospitalizations, be at risk for developmental problems, and be food insecure.<sup>25</sup> Food insecurity in turn leads to negative health outcomes for children, including more hospitalizations, iron deficiency anemia, problems with cognitive development, and behavioral and emotional problems.<sup>26</sup> Children of color are particularly at-risk for energy insecurity because they are at greater risk of living in low-income households where families must choose between paying for energy or utilities and paying for food and other expenses.<sup>27</sup>

Utility shut-off during extreme periods of heat or cold can impact children's health more than adults, which may become very important if this crisis continues into the hot, late spring and

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<sup>25</sup> Children's Sentinel Nutrition Assessment Program, Citizens Energy Corporation, *Fuel for Our Future, Impacts of Energy Insecurity on Children's Health, Nutrition and Learning* (Sept. 2007), [https://www.centerforhungerfreecommunities.org/sites/default/files/pdfs/fuel\\_for\\_our\\_future\\_energy%20insecurity\\_Sept07.pdf](https://www.centerforhungerfreecommunities.org/sites/default/files/pdfs/fuel_for_our_future_energy%20insecurity_Sept07.pdf).

<sup>26</sup> *Id.*; John T. Cook, Deborah A. Frank, Carol Berkowitz, et. al. *Food Insecurity Is Associated with Adverse Health Outcomes among Human Infants and Toddlers*, *The Journal of Nutrition* 134(6):1432-8 (June 2004), [https://www.researchgate.net/publication/8534194\\_Food\\_Insecurity\\_Is\\_Associated\\_with\\_Adverse\\_Health\\_Outcomes\\_among\\_Human\\_Infants\\_and\\_Toddlers](https://www.researchgate.net/publication/8534194_Food_Insecurity_Is_Associated_with_Adverse_Health_Outcomes_among_Human_Infants_and_Toddlers).

<sup>27</sup> See Children's Sentinel Nutrition Assessment Program, *supra*.

summer months in Texas, because they are less able to regulate their body temperatures.<sup>28</sup> For instance, in times of extreme heat, children may be more susceptible to dehydration and heat stroke.

While there are extant energy assistance programs, they are insufficient during the pandemic. The Children's Sentinel Nutrition Assessment Program (C-SNAP) compared the children that received energy assistance from the federal government via the Low Income Home Energy Assistance Program, or LIHEAP, to children in low-income families that did not receive energy assistance despite qualifying for the benefits. The study found that without energy assistance, children under the age of three in low-income families were 32% more likely to be admitted to a hospital. As noted above, underlying illness increases susceptibility to a severe form of COVID-19.

### *Elderly People*

The demographic experiencing the most devastating consequences of COVID-19 is persons over the age of 65.<sup>29</sup> For this reason, hygiene, social distancing, and self-isolation—and, accordingly, access to utility services—are particularly critical for this population.

Moreover, elderly persons may be particularly vulnerable to utility instability because persons over the age of 65 are overwhelmingly living on a fixed income such as Social Security retirement benefits.<sup>30</sup> For example, the average monthly Social Security benefit in Texas is

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<sup>28</sup> Rachel Blake, *A Bad Mix: Utility Shut-Offs and Chronic Illness*, SHELTERFORCE (July 12, 2018), <https://shelterforce.org/2018/07/12/a-bad-mix-utility-shut-offs-and-chronic-illnesses/>. See American Academy of Pediatrics, *Extreme Temperatures: Heat and Cold* (2020), <https://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/Children-and-Disasters/Pages/Extreme-Temperatures-Heat-and-Cold.aspx>.

<sup>29</sup> See *supra* FN 11 and accompanying text.

<sup>30</sup> There were 3,602,320 Texans 65 or older, according to the population estimates for the United States as reported by the Census Bureau. The Social Security Administration (SSA) reported that there were 3,119,831 Texans 65 or older receiving Social Security retirement benefits.

\$1,495.09, yet as discussed in greater detail below, the average residential energy bill in Texas is nearly ten percent of this amount, exclusive of other utilities.

In addition, elderly persons exist within a system that struggles to meet their needs in the absence of the current disaster. The federal Department of Health and Human Services' Agency for Healthcare Research and Quality has published data reflecting the poor health status of aged Texans and Texans with medical impairments.<sup>31</sup> Texas did not meet the national benchmark regarding adults age 65 and over who ever received a pneumococcal vaccination, adults age 65 and over who received an influenza vaccination in the last flu season, adults ages 18-64 at high risk (e.g., because of COPD) who received an influenza vaccination in the last flu season, and adults age 40 and over with diagnosed diabetes who received a dilated eye examination in the calendar year, among other Texans for whom the measure of health did not reach the benchmark. And yet advanced age and diabetes are two of the risk factors for greater susceptibility to the coronavirus that causes COVID-19.

Thus, for these Texans to lose utility service means additional stress on a health care system that already does not meet benchmark after benchmark.

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<sup>31</sup> *Nat'l Healthcare Quality and Disparities Report*, U.S. DEP'T OF HEALTH & HUM. SERV., [https://nhqrnet.ahrq.gov/inhqrdr/Texas/benchmark/table/Priority\\_Populations/Low\\_Income#close](https://nhqrnet.ahrq.gov/inhqrdr/Texas/benchmark/table/Priority_Populations/Low_Income#close) (last visited Mar. 19, 2020).

## LGBTQ+

Texas has the second highest number of LGBTQ+ residents in the nation,<sup>32</sup> including the second highest number of transgender people.<sup>33</sup> These populations can be particularly vulnerable to the coronavirus.<sup>34</sup>

Rates of tobacco and other substance use amongst LGBTQ+ persons is greater than in the general population,<sup>35</sup> which may place them at greater risk of severe respiratory illness from viruses like COVID-19.<sup>36</sup> The LGBTQ+ community also has higher rates of HIV<sup>37</sup> and cancer,<sup>38</sup> which means a larger number of immunocompromised individuals are vulnerable to COVID-19. LGBTQ+ people are known to delay seeking medical care for fear of bias and discrimination.<sup>39</sup> Lastly, LGBTQ+ persons—especially people of color and transgender people—are more likely to

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<sup>32</sup> Movement Advancement Project, *LGBT Populations* (Mar. 16, 2020), [https://www.lgbtmap.org/equality-maps/lgbt\\_populations](https://www.lgbtmap.org/equality-maps/lgbt_populations).

<sup>33</sup> Flores, A.R., Herman, J.L., Gates, G.J. & Brown, T.N.T., *How Many Adults Identify as Transgender in the United States?* (2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf>.

<sup>34</sup> National LGBT Cancer Network and GLMA: Health Professionals Advancing LGBTQ Equality, *Open Letter about Coronavirus and the LGBTQ+ Communities* (Mar. 11, 2020), <https://cancer-network.org/wp-content/uploads/2020/03/Press-Release-Open-Letter-LGBTQ-Covid19-7.pdf>.

<sup>35</sup> Grace, M., Lipari, R.N., Bose, J., et al, *Sexual Orientation and Estimates of Adult Substance Use and Mental Health: Results from the 2015 National Survey on Drug Use and Health* (Oct. 2016), <https://www.samhsa.gov/data/sites/default/files/NSDUH-SexualOrientation-2015/NSDUH-SexualOrientation-2015.htm>.

<sup>36</sup> National Institute on Drug Abuse, *COVID-19: Potential Implications for Individuals with Substance Use Disorders* (Mar. 12, 2020), <https://www.drugabuse.gov/about-nida/noras-blog/2020/03/covid-19-potential-implications-individuals-substance-use-disorders>.

<sup>37</sup> Centers for Disease Control and Prevention (CDC), *HIV among Gay and Bisexual Men* (Feb. 2017), <https://www.cdc.gov/nchhstp/newsroom/docs/factsheets/cdc-msm-508.pdf>; Herbst, J.H., Jacobs, E.D., Finlayson, T.J., et al, *Estimating HIV Prevalence and Risk Behaviors of Transgender Persons in the United States: A Systematic Review*, 12 AIDS BEHAV. 1-17 (2008).

<sup>38</sup> Quinn, G.P., Sanchez, J.A., Sutton, S.K., et al, *Cancer and Lesbian, Gay, Bisexual, Transgender/Transsexual, and Queer/Questioning (LGBTQ) Populations*, 65(5) CA CANCER J. CLIN. 384 (2015).

<sup>39</sup> Mirza, S.A. and Rooney, C., *Discrimination Prevents LGBTQ People From Accessing Health Care* (Jan. 2018), <https://www.americanprogress.org/issues/lgbtq-rights/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care/>.

have lower income,<sup>40</sup> which compounds the risk factors unique to the LGBTQ+ community with the vulnerabilities discussed below for the general low-income population.

Maintaining uninterrupted utilities is critical so that these populations can continue to follow appropriate social distancing regulations and guidelines. Stable housing, including the provision of utilities, is a fundamental social determinant of health, allowing people to stay adherent to treatment plans.<sup>41</sup> This is especially important for persons living with HIV, who need to maintain their treatment and medications to keep their immune system as healthy as possible.<sup>42</sup>

### *Modest Income Persons*

An estimated 14.9% of Texans live in poverty,<sup>43</sup> while the United Way estimates that as many as 42% of Texas families may struggle to afford basic necessities such as housing, food, childcare, health care, and transportation.<sup>44</sup> Recent studies confirm that as many as one in three U.S. households face challenges in meeting their energy needs.<sup>45</sup>

In 2018, the average residential energy bill in Texas was \$131.63 per month, not taking into account other utilities.<sup>46</sup> Continuing to meet these energy needs, especially into hotter months,

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<sup>40</sup> Badgett, M.V., Choi, S.K., and Wilson, B.D.M., *LGBT Poverty in the United States: A study of Difference between Sexual Orientation and Gender Identity Groups* (Oct. 2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/National-LGBT-Poverty-Oct-2019.pdf>.

<sup>41</sup> Aidala, A.A., Wilson, M.G., Shubert, V., et al, *Housing Status, Medical Care, and Health Outcomes among People Living with HIV/AIDS: A Systematic Review*, 106(1) AM. J. PUBLIC HEALTH e1-e23 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4695926/>.

<sup>42</sup> CDC, *Coronavirus Disease 2019 (COVID-19): People with HIV* (Mar. 18, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/hiv.html>.

<sup>43</sup> U.S. Census Bureau, *Income & Poverty: Texas*, <https://www.census.gov/quickfacts/fact/table/TX#> (last visited Mar. 19, 2020).

<sup>44</sup> United Ways of Texas and United Way of Greater Houston, *Alice: A Study of Financial Hardship in Texas* (2018), [https://www.uwtexas.org/sites/uwtexas.org/files/18UW\\_ALICE\\_Report\\_FullReport-Texas-12.18.18Final\\_w%20Energy%20logo.pdf](https://www.uwtexas.org/sites/uwtexas.org/files/18UW_ALICE_Report_FullReport-Texas-12.18.18Final_w%20Energy%20logo.pdf).

<sup>45</sup> U.S. Energy Information Administration (USEIA), *Residential Energy Consumption Survey* (2015), <https://www.eia.gov/consumption/residential/>.

<sup>46</sup> USEIA, *2018 Average Monthly Bill- Residential*, [https://www.eia.gov/electricity/sales\\_revenue\\_price/pdf/table5\\_a.pdf](https://www.eia.gov/electricity/sales_revenue_price/pdf/table5_a.pdf) (last visited Mar. 19, 2020).

could break the budgets of lower- and middle-income households. Additionally, unemployment claims in Texas have reportedly increased by 38% already,<sup>47</sup> and studies estimate that many Texas cities have a high percentage of individuals working in industries at high-risk from COVID-19.<sup>48</sup>

While not much is known about the morbidity and mortality of COVID-19 for low-income people specifically, pandemics of this nature have historically affected lower-income communities the most.<sup>49</sup> Low-income people already face more barriers to health<sup>50</sup>, and the COVID-19 pandemic has great potential to exploit this vulnerability. Low-income people are less likely to be able to follow social distancing guidelines because they are more likely to have hourly jobs and be exposed to more people in their place of work.<sup>51</sup> Additionally, low-income families are more likely to lose income while caring for children during times they would normally be in school.<sup>52</sup>

### *Persons with Disabilities*

Nearly fifteen percent of Texans, or over 4.2 million persons, receive Social Security benefits, according to the Social Security Administration, including benefits due to blindness,

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<sup>47</sup> Diamante, Reena, *Texas Unemployment Claims Spike Amid COVID-19 Pandemic*, Spectrum News (Mar. 19, 2020), <https://spectrumlocalnews.com/tx/austin/news/2020/03/19/how-you-can-file-for-unemployment-in-texas>; Ferman, M., *"It's going to hurt": New Coronavirus Shocks Texas Economy as Length of Public Health Crisis Remains Unknown*, The Texas Tribune (Mar. 19, 2020), <https://www.texastribune.org/2020/03/19/new-coronavirus-shocks-texas-economy-and-unemployment-could-spike/>.

<sup>48</sup> Muro, Mark and Whiton, Jacob, *The Places a COVID-19 Recession Will Likely Hit Hardest*, The Brookings Institution (Mar. 17, 2020) (citing Zandi, M., *COVID-19: A Fiscal Stimulus Plan*, Moody Analytics (Mar. 16, 2020), <https://www.brookings.edu/blog/the-avenue/2020/03/17/the-places-a-covid-19-recession-will-likely-hit-hardest/>).

<sup>49</sup> Oppenheim, Ben and Yamey, Gavin, *Pandemics and the Poor*, The Brookings Institution (Jun. 19, 2017), <https://www.brookings.edu/blog/future-development/2017/06/19/pandemics-and-the-poor/>.

<sup>50</sup> Khullar, Dhruv & Chokshi, Dave, *Health, Income, & Poverty: Where We Are & What Could Help*, Health Affairs, (Oct. 4, 2018), <https://www.healthaffairs.org/doi/10.1377/hpb20180817.901935/full/>.

<sup>51</sup> Mockaitis, Thomas, *Working Poor Will Suffer the Worst Health and Economic Effects of COVID-19* (Mar. 18, 2020), <https://thehill.com/opinion/white-house/488228-working-poor-will-suffer-the-worst-health-and-economic-effects-of-covid>.

<sup>52</sup> *Id.*

disability, or being the survivor of covered worker. The average monthly Social Security benefit in Texas is \$1,495.09 per month.

But hundreds of thousands of blind, disabled, or aged Texans do not even receive that much. Rather, they live on fixed incomes of less than 75% of the federal poverty income level (FPIL): for a one-person household, the FPIL is \$12,760 annually (\$1,063.33 monthly); for a two-person household, the FPIL is \$17,240 annually (\$1,436.67 monthly).<sup>53</sup> Low though they are, these poverty levels *exceed* the basic support received by blind, disabled, or aged Texans from the SSA under the Supplemental Security Income (SSI) program. In 2020, the SSI maximum monthly benefit for an individual is \$783. For a couple (in which each spouse separately meets the blind, disabled, or aged definition), the SSI maximum monthly benefit is \$1175.

Moreover, under SSI rules, individuals can have no more than \$2,000 of liquid resources at any time.<sup>54</sup> Thus, these blind, disabled, and aged Texans not only must survive on fixed income that is significantly less than the FPIL, these fellow Texans also have *very* limited cash or cash equivalents.

And that affects their access to utilities even during normal times. Blind, disabled, and aged Texans live throughout the state.<sup>55</sup> They are more likely to struggle to find employment and to have equal educational opportunities, both of which are positively correlated with good health and socioeconomic opportunity, to include stable access to utility services.<sup>56</sup> In addition, persons with disabilities are particularly vulnerable not only because those living on a fixed income already

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<sup>53</sup> Dep't Health Human Servs, 85 FEDERAL REGISTER 3060 (Jan. 17, 2020).

<sup>54</sup> There are very limited exceptions, such as disposing of proceeds of a recently sold homestead.

<sup>55</sup> SSA SSI RECIPIENTS BY STATE AND COUNTY, 2018 (Oct. 19, 2020), [https://www.ssa.gov/policy/docs/statcomps/ssi\\_sc/](https://www.ssa.gov/policy/docs/statcomps/ssi_sc/).

<sup>56</sup> *Disability and Health*, HEALTHYPEOPLE.GOV, <https://www.healthypeople.gov/2020/topics-objectives/topic/disability-and-health> (last updated Mar. 13, 2020).

struggle to make ends meet, but also because underlying physical health challenges may mean special susceptibility to serious disease or death from the coronavirus.